

January 24, 2003

Rhonda Schnare
Office of General Counsel
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

RE: INDIA: WTO General Agreement on Trade in Services

Dear Ms. Schnare:

DataAccess America Inc. (“DataAccess America”) welcomes the opportunity to file reply comments in this proceeding. DataAccess (India) Ltd. (“Data Access”)¹, the parent company of DataAccess America, is a subsidiary of SPA Enterprises Ltd. - an Indian conglomerate. SPA Enterprises has business interests spanning media, telecommunications and IT enabled services as well as development of infrastructure for telecommunication service. Data Access's business portfolio includes wholesale and retail of voice and data products. Data Access’s goal is to become a global carrier emerging from India. The company holds several telecommunication licenses in India and across the world for voice and data services. The company has offices worldwide. In the United States, DataAccess America has an application pending for international Section 214 authority for global facilities-based and resale telecommunications services.

As a subsidiary of one of the new licensed competitive carriers for international long distance services in India, DataAccess America disagrees with CompTel’s comments on trade barriers in India (p. 18/19). DataAccess America finds that the observations lack sufficient knowledge of the process followed by Indian Government towards liberalization of the telecommunications sector. In fact, India has made, and continues to make significant progress towards liberalization. Yet a reading of CompTel's comments would lead one to believe that the liberalization process in India has failed. This is simply not true. As a new competitive carrier in India, Data Access has had first hand experience in operating under the new licensing and regulatory regime, and has found it sufficient to compete with the incumbent provider of international services, VSNL.

¹ Website: www.dataaccessindia.com

1. The Regulatory Process in India Is Ahead Of Schedule and is Transparent

The Government of India launched the liberalization of the International Long Distance (“ILD”) Sector in 2002, as CompTel notes, a full two years ahead of the WTO commitments it made to liberalize the telecommunications sector and remove trade barriers for foreign investors. But CompTel goes on to state that India is not complying with its commitments to offer publicly available licensing criteria, and to issue regulatory decisions and procedures that are impartial with respect to all market participants. Data Access, a new competitive entrant that has had first-hand experience with the Indian licensing regime, believes that these allegations are unfounded.

The process that led to the liberalization of the international long distance market was completely transparent. During the years of 2001 and 2002, the Indian Government and TRAI, the national regulator, went through a thorough consultation process and engaged themselves in discussions with industry and other interested parties to determine the parameters of the entry conditions of new players. This including seeking the input from (1) existing telecom providers, (2) various industry associations, (3) foreign carriers operating in India, (4) the general public, and (5) public service organizations. The record of each of these consultations is available via TRAI’s Website (<http://www.trai.gov.in/consultation.htm>) as well as a summary of the comments provided by participants in the ILD liberalization proceeding.² On the basis of these comments, TRAI issued recommendations to the Department of Telecommunications on November 12, 2001. A list of TRAI’s recent consultation papers (for instance, on a Reference Interconnection Offer dated April 2002) is attached hereto as an Annex. As a result of these consultations, the Department of Telecommunication’s policy guideline “Guidelines for Issue of License for International Long Distance Service” was released in January 2002, and all interested parties were given 30 days to comment and register any complaints. The final version of these Guidelines³ was released in February 2002.

As demonstrated above, the entire liberalization process for the international long distance market was quick and transparent. All interested parties were allowed to be involved in the process, and had the opportunity to see their recommendations be addressed. As a result, when the market was opened last summer, true competition quickly developed with it accompanying benefits of lower prices, and better service.

2. India’s License Fees for International Long Distance Services are not Exorbitant

CompTel’s complaint that the license fees in India are “exorbitant”⁴ also is not founded. In comparison for license terms of domestic long distance as well as for

² [Http://www.trai.gov.in/4-Comments%20on%20ILD%2025th%20October%20revised.doc](http://www.trai.gov.in/4-Comments%20on%20ILD%2025th%20October%20revised.doc)

³ Downloadable at <http://www.dotindia.com/ild/ildindex.htm> (“Guidelines & Application”).

⁴ CompTel Comments at. 18.

domestic fixed line and GSM services, ILD license fees for a 20-years license are much lower.

Fee Type	International Long Distance	Domestic Long Distance
Upfront License Fee	US\$ 5.21M ⁵	US\$ 22M
License Roll Out Obligation Guarantee (Performance Bank Guarantee):	US\$ 5.21M ⁶	US\$ 90M
License Revenue Share (Quarterly Fee)	15% of AGR ⁷	15% of AGR

Compared to the size of the Indian market, these fees are reasonable. In particular, the upfront license fee of US\$ 5.21M is amortized over the 20-year license period, so that the licensee is not required to pay the entire fee all at once. In addition, the Performance Bank Guarantee is returned once the licensee fulfils its roll-out obligations.⁸

Another sign that the license fees are not unreasonable is that they have not prevented competitors from entering the market. TRAI has granted several ILD licenses in 2002 to the following competitors: M/s Reliance Communications (02/25/02), M/s Bharti Telesoinc Ltd. (03/13/02), Data Access /India) Ltd. (03/27/02). In addition, the Indian Government issued Letters of Intent regarding licenses for ILD services to (M/s Pacific Netinvest Ltd (02/20/02), M/s Connecting Network Ltd. (02/20/02), M/s Satyam Infoway Ltd. (03/14/02). At least two licensees started providing services in July 2002, Data Access being one of them.

3. Due to Liberalization and Increased Competition, the Incumbent's Markets are Rapidly Eroding

Another demonstration of the fact that India's liberalization of the ILD market is working is the rapid erosion of VSNL's market power. Within 5 months of starting operations, Data Access has succeeded in capturing almost 40% of the ILD market, and another competitor, Bharti has succeeded in gaining almost 10% of the market from the incumbent VSNL. This rapid erosion of the incumbent's market would not have happened in a market where the licensing and regulatory regime have failed. To the contrary, this is a clear sign that the liberalization efforts of the Indian government have worked and that the new ILD license regime complies with India's WTO commitments.

⁵ Rupees 250,000,000 – Art. 5.1 Standard License Agreement for ILD.

⁶ Rupees 250,000,000 – Art. 7.1 Standard License Agreement for ILD

⁷ AGR = Adjusted Gross Revenue: *See* Definition 36 of the Standard ILD License Agreement: "ADJUSTED GROSS REVENUE for the purpose of levying LICENCE Fee as a percentage of revenue shall mean the Gross Revenue as reduced by : Call charges (access charges) actually paid to other telecom service providers for carriage of calls."

⁸ Section 7, ILD Guidelines.

No where else in the world, not even in the United States, has such a rapid erosion of the incumbent's market share happened in the ILD sector so soon after the introduction of competition.

Data Access also has observed similar developments in other market sectors in India. For instance, the number of cellular phone users in India surged 91% in 2002 (compared to 2001) with 749,887 new subscribers in December 2002 alone and several competitors (such as AT&T, Singapore Telecommunications and Hutchison Whampoa) offering mobile services.⁹ The competition has already led to significant price cuts in the mobile sector¹⁰ and will very likely result in lower rates for the long distance market as well.

4. International Settlement Rates Between India and the U.S. Decrease

Finally, another evidence of the success of competition in the ILD market is the rapid decline of the International Settlement Rates between India and the United States. The FCC mandated settlement benchmark rate of US \$0.23 per minute for U.S. originated calls terminating in India has been passed. The settlement rate for calls on this route is now at U.S. \$0.17 per minute today, and no doubt will continue to fall as competition flourishes.

5. Conclusion

As the USTR examines the comments submitted in its Section 1377 review, and prepares its annual report, Data Access respectfully submits that if the USTR truly examines market conditions today in India, it will find that India has made great strides in keeping its WTO market opening commitments, and that competition is accelerating in India. Therefore, there is no reason for the USTR to find the Indian government in violation of any of its WTO commitments.

Respectfully submitted,

DATAACCESS AMERICA INC.

/s/ Ashutosh Misra

By: Ashutosh Misra
President and CEO

⁹ Total Telecom (www.totaltele.com): 01/13/03 "Indian cell phone users exceed 10m in December."

¹⁰ Total Telecom (www.totaltele.com): 01/07/03 "Indian state telcos cut long-distance mobile rates."

ANNEX

List of Consultations from the Indian Regulator's Website

<http://www.trai.gov.in/consultation.htm>

S. No.	Consultation Papers	Released Date
1.	Consultation Paper On Tariffs For Basic Services	23th September 2002
2.	Consultation Paper on Tariffs for Cellular Mobile Telephone Service	8th July 2002
3.	Revised Reference Interconnect Offer (RIO)	4th June 2002
4.	TRAI Consultation Paper on "Reference Interconnect Offer (RIO)"	5th Apr. 2002
5.	(i) TRAI Consultation Paper on "Issues Relating to Interconnections between Access Providers and National Long Distance Operators" intpap.doc (ii) Additional Annexures to TRAI Consultation Papers	14th Dec. 2001
6.	TRAI Consultation Paper on Introduction of Internet Telephony	23rd Nov. 2001
7.	TRAI Consultation Paper on "International Long Distance Services" (a) Preface and List of Contents (b) ILDO Consultation Paper	3rd Sept. 2001
8.	TRAI's Determination of Cost based Rental for WLL with Limited Mobility	23rd May 2001
9.	Consultation paper on "Licensing Issues relating to Radio Paging Service Providers (New) Annexure Vii Annexure V - Xviii	
10.	Consultation Paper on Policy Issues Relating to Limited Mobility by Use of Wireless in Local Loop Techniques in the Access Network by Basic Service Providers (New Documents)	3rd Nov. 2000
11.	Consultation Paper on Licensing Issues Relating to Public Mobile Radio Trunking Service Providers. Annexure II Annexure V Annexure VI Annexure VII Annexure VIII	25th August 2000
12.	Consultation Paper on VSAT Service	17th August 2000
13.	Consultation Paper on Universal Service Obligation	3 July 2000
14.	Consultation Paper on Licensing Issues Relating to Fixed Service Providers	12 June 2000
15.	Consultation paper on issues relating to the introduction of CPP for Cellular	23 May 2000

	Mobile Services	
16.	Consultation Paper (No. 2000/1) on Accounting Separation and Formats for Accounting Regulatory Statements	4 May 2000
17.	Consultation Paper (No. 99/6) on Isssues Relating to Cellular Mobile Services.	14 December 1999
18.	Consultation Paper On MTNL'S Tariff proposal for Cellular Mobile Services using C.D.M.A. Technology and related issues	12 October 1999
19.	Synopsis of emerging options based on the comments received on the Consultation Paper on 'Introduction Of Competitions in Domestic Long Distance Communications'	9 September 1999
20.	Summary of Comments on the Consultation Paper (No. 99/2) on Licence Fee and Terms & Conditions of the Licence Agreement for GMPCS Sevicere	
21.	Summary of CommentsOn The Consultation Paper (No. 99/1)On Introduction of Competition in Domestic Long Distance Communications ,September 7, 1999	7 September 1999
22.	Consultation Paper On Review Of Cellular Mobile Service Tariffs Following Migration To An Interim Revenue Share Of 15 Per Cent As License Fee And Introduction of Calling Party Pays (CPP) Regime for Cellular Mobile	31 August 1999
23.	Consultation Paper on Licence Fee Terms & Conditions of the Licence Agreement for GMPCS Services .	27 July 1999
24.	Consultation Paper on Introduction of Competition in Domestic Long Distance Communications	15 July 1999
25.	Consultation Paper on Viability Assessment for Licence fee Determination	21 December 1998
26.	Consultation Paper on Maintenance of Register for Interconnection	3 December 1998
27.	Consultation Paper on Quality of Service	
28.	Consultation Paper on Numbering Plan	
29.	Consultation Paper on Tariffs	